

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ROBERT E. SHEPHERD,

Petitioner,

v.

//

CIVIL ACTION NO. 1:07CV27
(Judge Keeley)

UNITED STATES OF AMERICA,

Defendants.

ORDER REMANDING THE CASE TO THE
MAGISTRATE JUDGE FOR FURTHER REVIEW

On October 23, 2006, the pro se petitioner, Robert E. Shepherd, filed a petition for Writ of Mandamus in the United States District Court for the Western District of Missouri. On February 23, 2007, the court in Missouri granted the petitioner provisional leave to proceed in forma pauperis and transferred the case to this Court.

On February 26, 2007, this Court referred the case to Magistrate Judge James E. Seibert for initial review. After reviewing the file, on May 22, 2007, Magistrate Judge Seibert determined that the petitioner had not submitted a "Prisoner Trust Account Report nor a Consent to Collection of Fees from Trust Account" required by this Court and, therefore, was unable to rule on the petitioner's request to proceed in forma pauperis.

Accordingly, Magistrate Judge Seibert entered an order directing the Clerk of Court to send the petitioner the necessary blank forms, Prisoner Trust Account Report and a Consent to

**ORDER REMANDING THE CASE TO THE
MAGISTRATE JUDGE FOR FURTHER REVIEW**

Collection of Fees from Trust Account, and directed the petitioner to submit the completed forms, together with ledger sheers from his trust account for the six months preceding his original filing date of October 26, 2006 within twenty days. The Order also advised that failure to comply would result in a recommendation that the complaint be dismissed.

When the petitioner failed to comply with the May 22, 2007 order, Magistrate Judge Seibert entered a "Show Cause Order" on August 21, 2007 directing the petitioner to show cause why his case should not be dismissed within ten days and again warning that failure to comply would result in a recommendation that this case be dismissed without prejudice for failure to prosecute. After the petitioner failed to comply with the August 21, 2007 show cause order, on September 28, 2007, Magistrate Judge Seibert filed a report and recommendation recommending that the case be dismissed without prejudice for failure to prosecute and warned that failure to object to the recommendation would result in the waiver of appellate rights on this issue.

The parties did not file any objections to the report and recommendation; however, on October 11, 2007, the petitioner filed a Consent to Collection of Fees From Trust Account. In light of this, the Court **REMANDS** the case to Magistrate Judge Seibert for

**ORDER REMANDING THE CASE TO THE
MAGISTRATE JUDGE FOR FURTHER REVIEW**

further review of the petitioner's request to proceed in forma
pauperis.

It is so **ORDERED**.

The Clerk is directed to mail a copy of this Order to the pro
se petitioner, certified mail, return receipt requested, and
counsel of record.

Dated: October 22, 2007.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE